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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,967	09/06/2001	Ralf Fischer	1695	6645

7590 07/14/2005

Striker Stricker & Stenby  
103 East Neck Road  
Huntington, NY 11743

EXAMINER
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WRIGHT, NORMAN M

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/914,967

Applicant(s)

FISCHER ET AL.

Examiner

Norman M. Wright

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 13 and 20 is/are rejected.
- 7) ☒ Claim(s) 14-19 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**NORMAN M. WRIGHT**  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 12-21 are present for examination. Claims 1-11 were cancelled by preliminary amendment filed on 9/6/01.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Glenn et al., U.S. Pat. No. 4,707,832, hereinafter '832.
4. As per claims 12 and 20, Glenn '832 teaches a switched point to point local network control mechanism having: allocation of rights to at least one channel/shared control channel, useable by a plurality of subscriber stations/nodes, transmitting signals/duplex communications, access authorization data/probability, an evaluation unit, determining whether access authorization data has a threshold value/traffic density and comparing it with a random number to determine the granting of access rights ( abs., col. 2, lines 2-5 et seq. and lines 23-40 et seq., col. 3, lines 55 et seq., col. 4, lines 3-10 et seq., col. 5, lines 7-11 et seq., and col. 11-13).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over '832 as applied to claim 12.

7. As to claim 13, '832 teach the claimed invention as recited above in claim 12, not explicitly taught is the condition of a random number being greater than or equal to the access threshold. The examiner takes official notice of both the modification and motive for making a determination based upon a number being greater, lesser or equal to a given value. It would have been obvious to one of ordinary skill in the art at the time of the invention, to modify the invention of '832 to arbitrarily use values of a given size as chosen by the system designer. A person of ordinary skill in the art would have chosen to perform such a modification because, the making of a decision based upon whether or not one desires a value to be greater or lesser is a rudimentary skill in the data processing arts. With such a desire in mind a person of ordinary skill in the art could have chosen to base a decision on whether the value is greater, lesser or equal as a convenience and other arbitrary reason.

***Allowable Subject Matter***

8. Claims 14-19, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: A search of the prior art fails to teach or render as obvious the claimed features as a whole and in particular, in connection with the independent claim the features of having the access value based upon class, or priority. While these features individually are known in the art, there does not appear to be a teaching to combine it with the present method for channel transmission optimization.

***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norman M. Wright whose telephone number is (571) 272-3844. The examiner can normally be reached on weekdays from 8:00 to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Morse can be reached on (571) 272-3838. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norman M. Wright  
Primary Examiner  
Art Unit 2134